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FILED
NOV 15 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ADR

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ERIC HODGE dba HOUSE OF CARPET, individually and on behalf of all others similarly situated,

Plaintiff,

v.

HICKORY SPRINGS MANUFACTURING COMPANY, VALLE FOAM INDUSTRIES (1995), Inc., DOMFOAM NTERNATIONAL, INC., THE CARPENTER COMPANY, THE WOODBRIDGE GROUP, FLEXIBLE FOAM PRODUCTS,. FXI FOAMEX INNOVATIONS, INC.FUTURE FOAM INC., VITAFOAM PRODUCTS CANADA LIMITED; AND VITAFOAM, INC.,

Defendants.

CASE NO.: C10-05167 JL

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

NATURE OF THE ACTION

1. Plaintiff Eric Hodge dba House of Carpet ("Plaintiff"), by its undersigned attorneys, individually, and on behalf of the class described below, files this class actions complaint for treble damages and other relief under the antitrust laws of the United States against defendants Hickory Springs Manufacturing Company, Valle Foam Industries (1995), Inc., Domfoam International, Inc,. The Carpenter Company, The Woodbridge Group, Flexible Foam Products, Inc. Scottdel, Inc,. FXI Foamex Innovations, Inc,. Future Foam Inc., Vitafoam products Canada Limited and Vitafoam, Inc. (collectively "defendants"). Upon personal knowledge with respect to its own acts, and upon information and belief with respect to all other matters, Plaintiff alleges the following:

I. Introduction

2. This lawsuit is brought as a class action on behalf of Plaintiff and all individuals and/or entities who purchased Flexible Slab Polyurethane Foam and/or Flexible Slab Polyurethane products (together "Flexible Slab Polyurethane Foam" or "Flexible Slab") in the United States directly from defendants, their predecessors, successors, parents, or controlled subsidiaries and affiliates from November 1, 2005 to the present ("class period"). Flexible Slab Polyurethane is a commodity widely utilized for cushioning and/or insulation in a variety of goods, including but not limited to but not limited to, household furniture, bedding, packaging and carpet padding.

3. Defendants are the leading manufactures and/or producers of Flexible Slab Polyurethane in the United States, they have established market dominance over the Flexible Slab Polyurethane Foam industry during the class period and they were presented with a variety of economic conditions that made the Flexible Slab Polyurethane Foam market susceptible to collusion.

4. Plaintiff is informed, believes and thereon alleges, defendants exploited these market conditions during the class period by entering into an unlawful combination of conspiracy to

artificially fix, raise, maintain and/or stabilize the price of Flexible Slab Polyurethane Foam sold in the United States.

5. Because of their antitrust conspiracy, defendants have been able to charge artificially inflated prices for Flexible Slab Polyurethane Foam that cannot be explained and/or supported by market fundamentals and which establishes a plausible inference of conspiracy. Specifically, between November 1, 2005 and the present, defendants were able to implement unusual and unprecedented price increases for Flexible Slab Polyurethane Foam during a period in which transportation and materials costs and demand for Flexible Slab Polyurethane Foam products decreased.

6. Plaintiff Foam Factory, Inc. purchased Flexible Slab Polyurethane Foam directly from one or more of the defendants during the class period. Because of defendants' unlawful conduct, Plaintiff and the class have been forced to pay supra-competitive prices for Flexible Slab Polyurethane Foam and have suffered antitrust injury to their property and/or business.

II. Jurisdiction and Venue

7. Plaintiff brings this action pursuant to Sections 4 and 16 of they Clayton Act, 15 U.S.C 15 and 26, for treble damages and other relief, including but not limited to reasonable attorney's fees and costs of suit, for defendants' violations of Section 1 of the Sherman Act 15, U.S.C 1.

8. The Court has jurisdiction over this action pursuant to 28 U.S.C. 1331 and 1337 and Sections 4 and 16 of the Clayton Act, 15 U.S.C. Sections 15(1) and 26.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. Section 1391 (b) and (c) because, during the class period, one or more of the defendants resided, transacted business, was

found and/or had agents in this district and because a substantial portion of the events giving rise to Plaintiff's claim occurred in this district.

10. This court has in personam jurisdiction over each of the named defendants because, inter alia, each defendant: (a) transacted business in the United States; (b) directly and/or indirectly sold and/or marketed substantial quantities of Flexible Slab Polyurethane Foam throughout the United States; (c) had substantial aggregate contacts with the United States as a whole and/or (d) was engaged in an illegal price-fixing conspiracy that was directed at, and had the intended effect of causing injury to, persons and/or entities residing in, located in and/or doing business throughout the United States, including but not limited to in this judicial district.

III. Interstate Trade And Commerce

11. During the class period, defendants produced, manufactured, distributed and/or sold Flexible Slab Polyurethane Foam through interstate commerce in a continuous and/or uninterrupted flow to customers in states other than the states in which defendants actually market and/or sell such products.

12. Defendants, and each of them, have used instrumentalities of interstate commerce to market and/or sell Flexible Slab Polyurethane Foam.

IV. **The Parties**

A. **Plaintiff**

13. Plaintiff Eric Hodge dba House of Carpet is a California corporation with its principal place of business in Contra Costa County, California. During the class period, Plaintiff purchased Flexible Slab Polyurethane Foam from one or more of the defendants. Because of the

conspiracy herein alleged, the prices for the Flexible Slab Polyurethane Foam Plaintiff purchased from defendants were higher than they otherwise would have been in a competitive market.

B. **Defendants**

14. Defendant Hickory Springs Manufacturing Company ("Hickory Springs") is a North Carolina corporation, located at 235 2nd Avenue, N.W., Hickory North Carolina and has a regional office located at 4542 East Dunham Street, Los Angeles, CA. Defendant Hickory Springs is one of the largest integrated components manufacturer and supplier for the furniture and bedding industries in the United States and throughout the world. With more than 160 Flexible polyurethane foam formulations, Defendant Hickory Springs is one of the United States' largest producers of foam. During the class period, Defendant Hickory Springs, either directly and/or through its affiliates, sold Flexible Slab Polyurethane Foam throughout the United States.

15. Defendant Valle Foam Industries (1995) Inc ("Valle) is a privately owned and operated corporation located at 4 West Dr., Brampton, Ontario, Canada. Defendant Valle manufactures polyurethane foam for the furniture, bedding, packaging, carpet, and children's toy industries. During the class period, Defendant Valle, either directly and/or through its affiliates, sold Polyurethane Foam throughout the United States.

16. Defendant Domfoam International, Inc. ("Domafoam") is located at 8785 Langelier Boulevard, Montreal, Quebec, Canada. Defendant Domfoam is Canada's largest polyurethane foam manufacturer. Defendant Domfoam manufactures a diverse array of polyurethane products for various use in the United States, including but not limited to bedding, furniture, and mattresses. During the class period, Defendant Domfoam, either directly and/or through its affiliates, sold Polyurethane Foam throughout the United States.

17. Defendant The Carpenter Company ("Carpenter") is a privately owned and operated company, located at 5016 Monument Avenue, Richmond, Virginia. Carpenter operates around 30 locations in the Unites States, including but not limited to but not limited to a regional office in Riverside, California. Defendant Carpenter is the largest manufacturer of "comfort cushioning" in the world. It makes a wide variety of polyurethane foam and polyester fiber

comfort cushioning. During the class period, Carpenter, either directly and/or through its affiliates, sold Flexible Slab Polyurethane Foam throughout the Unites States.

18. Defendant the Woodbridge Group ("Woodbridge") is a Canadian corporation located at 4240 Sherwoodtowne Boulevard, Mississauga, Ontario, Canada. During the class period, Woodbridge, either directly and/or through its affiliates, sold Flexible Slab Polyurethane Foam throughout the United States.

19. Defendant Flexible Foam Products, Inc. ("Flexible Foam") is a privately owned and operated Ohio company, located at 200 East North Street Spencerville, Ohio, and has operations in multiple states, including but not limited to Texas, Indiana, Florida and Wisconsin. It is a subsidiary of Ohio Decorative Products, Inc., also of Spencerville, Ohio. Defendant Flexible Foam is one of the world's largest suppliers of polyurethane foam. It has been manufacturing Polyurethane Foam and rebound products for customers in the bedding, flooring, furniture, packaging, and automotive industries for over 50 years. During the class period, Defendant Flexible Foam, either directly and/or through its affiliates, sold Flexible Slab Polyurethane Foam throughout the United States.

20. Defendant Scottdel, Inc. ("Scottdel") is a privately held corporation, headquartered at 400 Church Street, Swanton, Ohio. Defendant Scottedel manufactures bonded urethane carpet cushion and offers commercial and residential bonded urethane cushions. Defendant Scottdel specializes in the sale of polyurethane foam utilized in carpet padding. During the class period, Defendant Scottdel either directly and/or through its affiliates, sold Flexible Slab Polyurethane Foam throughout the United States.

21. Defendant FXI Foamex Innovations, Inc. ("Foamex") is a privately owned and operated company, located at Rose Tree Corporate Center II, 1400 Providence Road, Suite 2000, Media, PA. Defendant FXI Foamex Innovations, Inc is the successor in interest to Defendant Foamex International, Inc., and a leading producer of foam products for the home, healthcare, electronics, industrial personal care and transportation markets. Its products include finished goods, sub-assemblies, services and raw materials for OEMs, fabricators and retailers. During the class

period, Defendant Foamex, either directly and/or through affiliates, sold Flexible Slab Polyurethane Foam throughout the United States.

22. Defendant Future Foam, Inc. ("Future Foam"), the leading supplier of bulk foam to foam fabricators in the United States, is a privately owned and operated company located at 1610 Avenue N, Council Bluffs, IA and operates a pouring plant located at 2451 Cypress Way, Fullerton, CA. Defendant Future Foam produces foam products for bedding, foam blocks, carpet cushion, furniture and packaging. During the class period, Defendant Future Foam, either directly and/or through its affiliates, sold Flexible Slab Polyurethane Foam throughout the United States.

23. Defendant Vitafoam Products Canada Limited ("Vitafoam Canada") is a privately owned and operated company, located at 150 Toro Road, North York, Ontario, Canada. Defendant Vitafoam Canada manufactures all types of flexible polyurethane foam for use in furniture, bedding and automotive applications including but not limited to packaging, medical, industrial and full range of memory foams. It also produces latex mattresses and toppers. During the class period, Defendant Vitafoam Canada sold Flexible Slab Polyurethane Foam, either directly and/or through its affiliates, throughout the United States.

24. Defendant Vitafoam Inc. ("Vitafoam, Inc.") is a privately owned and operated company, located at 2215 Shore Street, High Point, NC. Defendant Vitafoam, Inc. manufactures a wide variety of flexible slab polyurethane products, including but not limited to mattresses, furniture, and carpet padding. Defendant Vitafoam Canada and Vitafoam, Inc. are hereinafter collectively referred to collectively as "Defendant Vitafoam". During the class period, Vitafoam, Inc. either directly and/or through its affiliates, sold Flexible Slab Polyurethane Foam, throughout the United States.

V. Agents and Co-Conspirators

25. Various other persons, firms and corporations, not named as defendants in this complaint, have participated as co-conspirators with defendants in the violations alleged herein, and aided, abetted and performed acts and made statements in furtherance of the conspiracy.

26. The acts alleged against defendants in this complaint were authorized, ordered or done by their officers, agents, employees, or representatives, while actively engaged in the management and operation of defendants' businesses and/or affairs.

27. Each defendant acted as the principal. Agent or joint venture of, and/or for, other defendants concerning the acts, violations and common course of conduct alleged by Plaintiffs herein.

28. Whenever this complaint refers to an act, deed and/or transaction of a corporation and/or entity, the complaint is alleging that the corporation or entity engaged in the act, deed, and/or transaction by or through its officers, directors, agents, employees and/or representatives while they were actively engaged in the management, direction, control and/or transaction of the corporation's entity business and/or affairs.

VI. CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action on behalf of itself and as a class action under the provisions of Rule 23(1) and (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of all members of the following class:

> All persons, excluding governmental entities, defendants, and the present and former parents, predecessors subsidiaries and affiliates of the foregoing, who purchased Flexible Slab Polyurethane Foam directly from any of the defendants at any time during the period from November 1, 2005 to the present.

30. Plaintiff believes there are hundreds, if not thousands, of class members as above described, the exact number and their identities are known by defendants. The class is so numerous and geographically disposed that joinder of all class members is impracticable.

31. There are questions of law and fact common to the class, which questions relate to the existence of the conspiracy alleged, and the type and common pattern of injury sustained because thereof, including but not limited to, but not limited to:

a. Whether defendants engaged in a combination and/or conspiracy to raise, fix, maintain and/or stabilize the prices of Flexible Slab Polyurethane Foam sold in the United States.

b. The duration and extent of the combination and/or conspiracy alleged herein;

c. Whether the alleged combination and/or conspiracy violated Section 1 of the Sherman Act;

d. Whether defendants took steps to actively conceal the combination and/or conspiracy from Plaintiff and other class members;

e. Whether defendants' conduct caused the price of Flexible Slab Polyurethane Foam sold in the United States to be artificially high and non-competitive;

f. Whether Plaintiff and the class members were injured by defendants' conduct; and

g. The appropriate measure of damages sustained by Plaintiff and other class members

32. These and other questions of law and fact common to the class members, including but not limited to legal and factual issues relating to liability and damages, predominate over any questions affecting only individual members.

33. Plaintiff is a class member, Plaintiff's claims are typical of the claims of the class members, and Plaintiff will fairly and adequately protect the interests of the class members.

34. Plaintiff's interests are coincident with, and not antagonistic to those of the other class members.

35. Plaintiff is represented by counsel who is competent and experienced in the prosecution of antitrust and class action litigation.

36. A class action provides a fair and efficient method for the adjudication of this controversy. The prosecution of separate actions by individual class members would create a risk of inconsistent and/or varying adjudications.

37. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. It will permits a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would require. It also permit the adjudication of relatively small claims by many class members who could not afford individually to litigate an antitrust claim such as that asserted herein. Finally, there are no difficulties likely to be encountered in the management of this class action that would preclude

its maintenance as a class action and no superior alternative exists for the fair and efficient adjudication of this controversy and behalf of Plaintiff and the class members.

38. Defendants have acted, and refused to act, on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class.

VII. **FACTUAL ALLEGATIONS**

39. The Flexible Slab Polyurethane Foam industry has several characteristics that facilitates a conspiracy, including but not limited to, the following: (1) high market concentration; (2) economic barriers to entry; (3) commoditization and standardization; (4) inelasticity of demand; and (5) participation in trade and business associations.

40. During the class period, the Flexible Slab Polyurethane Foam industry was dominated by a couple of companies that marketed, sold and distributed products throughout the United States. For example, in 2004, the Herfindahl-Hirschman Index ("HHI"), a standard measure of concentration for the Flexible Slab Polyurethane Foam market, was 1,896 which at that time would have been considered high concentrated by the Federal antitrust enforcement agencies.

41. During this time, the named defendants were responsible for production of approximately eighty nine percent (89%) of the output share in the Flexible Slab Polyurethane Foam market. At the same, none of the defendants had a market share that would make it economically feasible to charge supra-competitive prices absent a collective agreement to conspire and fix the price of Flexible Slab Polyurethane Foam. This level of concentration provides an environment in which the potential benefits of collusion are larger than in a more concentrated market. However, the number of firms needed to cartelize the vast majority of industry output in Flexible Slab Polyurethane Foam is manageable.

42. Plaintiff is informed, believes, and thereon alleges, that defendants' collective dominance and control over the Flexible Slab Polyurethane Foam market motivated them to enter into conspirational agreements and facilitated their ability to implement their conspiracy to fix the price of Flexible Slab Polyurethane Foam.

43. There are significant manufacturing and financial barriers to entry in the Flexible Slab Polyurethane Foam industry. Due to the wholesale nature of economics of scale,

competition in the Polyurethane Foam market requires the investment of millions of dollars for manufacturing, technology, transportation, workforce and other overhead related to the industry. These barriers to entry have made and continue to make it extremely difficult for smaller manufacturers to compete with defendants and have facilitated industry dominance.

44. Therefore, the financial structure of the Flexible Slab Polyurethane Foam industry has allowed defendants to implement their antitrust conspiracy by eliminating competition and artificially stabilizing the prices of Flexible Slab Polyurethane Foam market without losing market share.

45. A "commodity product" is characterizes as a product that is readily interchangeable and for which competition is primarily driven by price instead of other market pressures. The mass production and interchangeability of commodity products results not only in pressure for competitors to enter into conspiracies to fix and maintain prices, but serves as a mechanism to successfully adopt and implement such conspiracies.

46. Flexible Slab Polyurethane Foam is a homogenous commodity product. Flexible Slab Polyurethane Foam supplied by one producer is interchangeable with the product supplied by other producers.

47. Thus, Flexible Slab Polyurethane Foam customers make purchase decisions based largely, if not entirely, on price. This commoditization and interchangeability of Flexible Slab Polyurethane Foam facilitated defendants' conspiracy by making price coordination simpler than if defendants had numerous distinct products with varying features.

48. "Inelastic demand" is an economic term that is used to describe a situation in which the supply and demand for a good is unaffected when the price of that food or service changes. When the demand for a product is inelastic, it ensures that the economic benefits of a collusive agreement to raise prices will not be displayed by a resulting stark drop in the quantity demanded at a new and increased price.

49. The Polyurethane Foam industry has a number of economic factors and conditions that make its price "inelastic". Specifically, Flexible Slab Polyurethane Foam presents an array of qualities and characteristics including but not limited to light weight, durability and

breathability which ensure it cannot be easily replaced by a competing product. The inelastic nature of the Flexible Slab Polyurethane made the market susceptible to increased profits because of collusion and allowed defendants to implement their conspiracy without jeopardizing their output.

50. Plaintiff is informed, believes and thereon alleges, that during the class period, defendants were members in a number of business and trade associations serving the Flexible Slab Polyurethane Foam industry, including but not limited to the Polyurethane Association, Alliance of Flexible Polyurethane Foam and Carpet Cushion Council.

51. Plaintiff is informed, believes and thereon alleges, that participation in these aforementioned trade associations provided defendants with the opportunity to conduct conspirational meetings. Plaintiff is further informed, believes, and thereon alleges that defendants' in person collusive pricing discussion frequently took place at trade association meetings.

52. Plaintiff is informed, believes and thereon alleges, that during the class period, defendants exploited the aforementioned market conditions to implement a conspiracy to fix, raise, maintain and/or stabilize the price such products were sold in the United States at anartificially inflated and anti-competitive level. Defendants' collusion is evidenced by unusual price movements in the market for Flexible Slab Polyurethane Foam during the class period that cannot be explained by market fundamentals. Because of their anticompetitive conduct, defendants are the subject of ongoing criminal investigations by antitrust authorities in the domestically and internationally.

53. Prior to the class period, the Flexible Slab Polyurethane Foam industry was characterized by stable pricing. Between January 1996 through October 2005, the price of Flexible Slab Polyurethane Foam remained stable, even in the face of moderate fluctuation in the cost of inputs.

54. The most striking example of this phenomenon occurred in late 2000 and early 2001, where the Producer Price Index ("PPI") for Flexible Slab Polyurethane Foam furniture and furnishings actually declined by four percent (4%) during a period when the combined price for

Toluene Disocyanates ("TDI") and Polyether Polyl ("Polyether") (the two predominant input cost variables for Flexible Slab) increased by approximately nine percent (9%).

55. However, during the class period this stability gave way to remarkable increases in prices for Flexible Slab Polyurethane Foam which reached unprecedented levels. Indeed, between October and November 2005, prices of Flexible Slab Polyurethane Foam furniture and furnishings increased by over forty percent (40%).

56. While this price increase was almost contemporaneous with a sharp increase in TDI and Polyether prices, it was inconsistent with long-standing stability of output prices, it was inconsistent with long-standing stability of output prices in the face of input cost fluctuation. Furthermore, the price increases in October and November 2005 cannot be solely attributed to rising input costs, because the increase in price of Flexible Slab Polyurethane Foam during this period outpaced the corresponding rise in the combined price of TDI and Polyether.

57. Even after input costs stabilized, defendants' prices for Flexible Slab Polyurethane Foam again increased sharply several times during the class period from April 2006 through October 2006, from April 2008 through August 2008 and from May 2009 through early 2010.

58. Moreover, during the class period, demand for Flexible Slab Polyurethane Foam was decreasing, which should have resulted in lower prices. Indeed, by 2009, defendants faced a market that was subject to declining prices and reduced demand for Flexible Slab Polyurethane Foam. Nevertheless, defendants' prices defied conventional market behavior, and actually increased during the second half of 2009.

59. These sharp price increases cannot be explained by changes in raw material prices, shifts in demand and/or conscious parallel pricing. Indeed, while the cost of certain inputs increased during the class period, the amount of those increases was not sufficient to support the very large price increases for Flexible Slab Polyurethane Foam.

60. Defendants coordinated price increase announcements to effectuate their conspiracy. For example, defendants announced price increases of thirteen and one-half percent (13.5%) in 2007, at least twenty percent (20%) in 2008, twenty percent (20%) in 2009 and twenty percent (20%) in 2010. By reason of these price increase announcements, defendants were able to

implement price increases and/or stabilize prices in the market for Flexible Slab Polyurethane Foam.

61. Upon information and belief, these coordinated price increases and irrational price movements were because of conspiratorial discussions regarding price fixing and market allocation of Flexible Slab Polyurethane Foam between defendants and their co-conspirators. These collusive discussions among defendants were conducted primarily by means of telephone, electronic mail, and in-person meetings and resulted in understandings and agreements on most price increases for Flexible Slab Polyurethane Foam going back to at least November 2005.

62. On or about July 27, 2010, a number of national and local news organizations reported that the Federal Bureau of Investigation ("FBI") agents raided the offices of defendant Carpenter in connection with its potential involvement in a world-wide price fixing and market allocation conspiracy in the market for polyurethane foam. News services reported that FBI agents took boxes and bags of information out of the building and forced several of its offices to close.

63. The raid conducted in Virginia was of a coordinated worldwide probe in the polyurethane foam market conducted by United States, European Union and Canadian competition regulators.

64. On or about August 3, 2010, the European Commission ("EC") confirmed in a press release that on or about July 27, 2010 the EC carried out unannounced inspections at the premises of producers of polyurethane foam for potential violations of European Union ("EC") Treaty Rules, which inter alia, prohibit certain anti-competitive practices. The inspections were carried out in several EU member states, including but not limited to Belgium, United Kingdom and Austria.

65. The United States Department of Justice, through spokesperson, also confirmed the raid and stated, they can't comment on the case because it's sealed under a judge court order."

66. Separately, Defendant Carpenter confirmed the various government investigations, stating, "[i]n connection with a multi-jurisdiction investigation of the pricing practices related to polyurethane foam in North America and Europe, the US Government, the European

Commission and the Ontario Commissioner of Competition have required that several manufacturers of polyurethane foam, including but not limited to Carpenter Co. and several of its subsidiaries, produce certain information and documents. Carpenter Co. is being fully responsive and cooperative with these entities to facilitate their review".

VIII. **Equitable Tolling**

67. Defendants engaged in the successful combination and/or conspiracy to raise and fix prices, which had the effect of increasing prices to an artificially high level, and which by its nature was inherently self-concealing. During the class period, Plaintiff had no knowledge of defendants' unlawful combination and/or conspiracy.

68. Defendants' wrongful conduct was carried out in part through means an/or methods which were designed to avoid detection, and which, in fact, successfully precluded detection.

69. Although Plaintiff exercised due diligence throughout the class period, it did not and/or could not have discovered defendants' unlawful combination and/or conspiracy at any earlier date. Defendants undertook affirmative acts of concealment of their combination and/or conspiracy, including but not limited to their attendance at secret meetings, and engaging in secret conversations concerning the allocation of markets and customers, and price increases for Flexible Slab Polyurethane Foam.

70. In addition, defendants wrongfully concealed their illegal conduct from Plaintiff and other class members by issuing and/or causing to be issued public statements which falsely attributed price increased for Flexible Slab Polyurethane Foam factors other than defendants' illegal scheme and/or unlawful conduct.

71. Because their combination and/or conspiracy was kept secret by defendants, Plaintiff was unaware of the anticompetitive conduct concerning Flexible Slab Polyurethane Foam that was secretly agreed herein. It was not until on or about July 27, 2010 when it was disclosed for the first time that there was a worldwide investigation into the market for Flexible Slab Polyurethane Foam, that Plaintiff became aware, and/or could have become aware with the exercise of reasonable diligence, of defendants' anticompetitive conduct.

72. Because of the concealment of the conspiracy, Plaintiff asserts toiling of the applicable statute of limitations affecting the right of action by Plaintiff.

IV. Claim for Violations of the Sherman Act (15 U.S.C. Section 1)

73. Plaintiff incorporates by reference, as if fully set forth herein, the allegations contained in the preceding paragraphs of this complaint.

74. Beginning at least as early as November 2005 and continuing to the present, the exact dates being currently unknown to Plaintiff, defendants entered into and engaged in a combination or conspiracy in unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act.

75. Pursuant to this combination and/or conspiracy, defendants agreed to fix, raise, maintain and/or stabilize prices of Flexible Slab Polyurethane Foam sold in the Unites States.

76. In addition, pursuant to their combination and/or conspiracy, defendants have implemented price increases of Flexible Slab Polyurethane Foam sold in the United States.

77. For the purpose of formulating and effectuating their combination or conspiracy, defendants engaged in anti-competitive actives, the purpose and effect of which was to artificially fix, raise, maintain and/or stabilize the process for Flexible Slab Polyurethane Foam sold in the United States. Defendants' anti-competitive conduct included but is not limited to the following:

a. Participating in meetings and conversations to discuss the Flexible Slab Polyurethane Foam market in the United States and elsewhere;

b. Agreeing to refrain and, in fact, refraining from competing amoung themselves with respect to the sale of Flexible Slab Polyurethane Foam in the Unites States;

c. Communicating with each other regarding the prices to be charged for Flexible Slab Polyurethane Foam;

d. Agreeing to charge at certain levels and otherwise raise, fix, maintain and/or stabilize the prices of Flexible Slab Polyurethane Foam sold in the United States and elsewhere;

e. Agreeing to divide and allocate customers and markets in which Flexible Slab Polyurethane Foam is sold;

f. Exchanging information about Flexible Slab Polyurethane Foam prices and/or sales volumes;

g. Monitoring and/or implementing the arrangements among cartel members; and

h. Selling Flexible Slab Polyurethane Foam to Plaintiff and class members in the United States at the agreed upon and supra-competitive prices.

78. Defendants' combination or conspiracy had the following effects, among others;

a. Competition in the sale of Flexible Slab Polyurethane Foam by defendants has been restrained, suppressed and/or eliminated;

b. Prices for Flexible Slab Polyurethane Foam by defendants in the United States have been raised, fixed, maintained or stabilized at artificially high and non-competitive levels; and

c. Plaintiff and class members have been deprived of the benefit of free and open competition in the market for Flexible Slab Polyurethane Foam sold in the United States.

79. Defendants' combination or conspiracy to unreasonably restrain trade and commerce by artificially reducing or eliminating competition in the United States for Flexible Slab Polyurethane Foam constitutes a violation of Section of 1 of the Sherman Act (15 U.S.C. 1)

80. Because of defendants' unlawful conduct, prices for Flexible Slab Polyurethane Foam were raised, fixed, maintained and/or stabilized in the United States at a level higher than they would have been in the absence of the anti-competitive conduct alleged in this complaint.

81. Because of defendants' unlawful conduct, Plaintiff and the other class members have been injured in their businesses and property in that they have paid more for Flexible Slab Polyurethane Foam than they otherwise would have paid in the absence of defendants' unlawful conduct.

82. As a direct proximate result of defendants' scheme, Plaintiff and the class members have been injured and financially damaged in their respective business and property, in amounts which are presently undetermined. Plaintiff's injuries consist of paying higher prices to purchase Flexible Slab Polyurethane Foam than it would have paid absent defendants' conduct. Plaintiff's injuries are of the type the antitrust laws were designed to prevent and flow from that which makes defendants' conduct unlawful.

X. Request For Relief

WHEREFORE, Plaintiff prays that the Court enter judgment on its behalf and on behalf of the class herein, adjudging and decreeing that:

1. This action may proceed as a class action, with Plaintiff as the designated class representative and its counsel as class counsel;
2. Defendants have engaged in a contract, combination, and conspiracy in violation of Section 1 of the Sherman Act (15 U.S.C. 1), and Plaintiff and the class have been injured in their businesses and property because of defendants' violations;
3. Plaintiff and the class members recover damages sustained by them, as provided by the federal antitrust laws, and that a joint and several judgment in favor of Plaintiff and the class be entered against the defendants in an amount to be trebled pursuant to such laws;
4. Defendants, their subsidiaries, affiliates, successors, transferees, assignees, and the respective officers, directors, partners, agents, and employees thereof and all other persons acting or claiming to act on their behalf be permanently enjoined and restrained from continuing and maintaining the combination, conspiracy, or agreement alleged herein;
5. Plaintiff and the class members be awarded pre-judgment and post-judgment interest, and that such interest be awarded at the highest legal rate from and after the date of service, of the initial complaint in this action;
6. Plaintiff and the class members recover their costs of this suit, including but not limited to reasonable attorney's fees as provided by law; and

7. Plaintiff and the class members receive such other or further relief as may be just and proper.

Respectfully submitted,

Dated: November 14, 2010

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Demand For Jury Trial

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all the claims asserted in this complaint so triable.

Respectfully submitted,

Dated: November 14, 2010

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